IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1369 OF 2006
IN
SUIT NO.1357 OF 1988

Bhartkumar Chinubhai Banker ...Plaintiff
Vs.
Kumari Salima Suleman Oomer & Anr. ...Defendants
And
Mrs. Manjulaben Bharatkukar Banker& Ors. ...Applicants

Mr. Rafiq Peermohinudin with Mr. N.S. Rodriques
i/b. Desai D. Diwanji for Defendant No.2

CORAM: SMT. ROSHAN DALVI, J.
DATED: 22ND JANUARY, 2007

P.C.

1. This Chamber Summons is for unusual reliefs of setting aside the abatement of the suit upon condoning the delay of 4 years 51 days for taking out this Chamber Summons for bringing the heirs of the original diseased Plaintiff on record by virtue of amendment to the plaint upon the restoration of the abetted Suit. The Suit was filed in 1998. Interim reliefs have been refused. The Plaintiff is the monthly tenant of Defendant No.1. The Defendant No.2 is the transferee of the freehold interest of the entire property of the Defendant No.1 for which the Plaintiff claims to be the monthly tenant of the part.

2. There has been protracted litigation between the parties in the Small Cause Court since 1970. The Defendant No.1 obtained an eviction decree on 24th July, 1973. The Advocate for Defendant No.2 states that there have been transfer Petitions, Review Applications, 4 writ petitions and an appeal to the Supreme Court, all of which have been dismissed. The free hold interest in the entire property has been transferred to the Defendant No.2. It is impossible to accept that the Applicants had no knowledge of the abatement of the Suit or the proceedings to prevent the abatement. The Application is considerably delayed and lacks bonafides. The application is dismissed. No order as to costs.

(SMT.ROSHAN DALVI, J.)